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S. HRG. 99-605

NOMINATION OF DAVID B. ROHR

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

NOMINATION OF

DAVID B. ROHR FOR REAPPOINTMENT AS A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION

FEBRUARY 25, 1986

Printed for the use of the Committee on Finance

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NOMINATION OF DAVID ROHR FOR REAPPOINTMENT AS A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION

TUESDAY, FEBRUARY 25, 1986

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The Committee met, pursuant to notice, at 2:11 p.m., in room SD-215, Dirksen Senate Office Building, the Honorable John C. Danforth presiding.

Present: Senators Danforth, Grassley, and Baucus.

[The press release announcing the hearing and the prepared biographical data of David B. Rohr follows:]

[Press Release No. 86-008]

COMMITTEE ON FINANCE TO REVIEW REAPPOINTMENT OF ITC'S DAVID ROHR

The reappointment of David B. Rohr as a member of the International Trade Commission will be considered by the Senate Committee on Finance February 25, Chairman Bob Packwood (R-Oregon) announced today.

The nomination hearing is scheduled to begin at 2 p.m., Tuesday, February 25, 1986, in Room SD-215 of the Senate Dirksen Office Building in Washington.

Senator Packwood said Senator John C. Danforth (R-Missouri), Chairman of the Committee on Finance's Subcommittee on International Trade, would preside at the hearing.

Mr. Rohr, a native of Hartford, Connecticut, has been a Commissioner of the ITC since March 1984.

PERSONAL DATA
DAVID B. ROHR

A. BIOGRAPHICAL:

1. Name:
   David B. Rohr

2. Address:
   16821 Melbourne Drive
   Laurel, Maryland 20707

3. Date and Place of birth:
   April 18, 1933; Hartford, Connecticut, USA

4. Marital status:
   Married: Loretta A. French

5. Names and ages of children:
   Sharon E. Rohr, 17 years
   Derek R. Rohr, 14 years

6. Education:
   Colorado State University 1952-53;
   1955-58, B.S., Business Administration

   Colorado State University 1960-61, M.S.
   Candidate, Economics 1963

   Stanford University 1967-68

7. Employment record:
   3/84 - Present:
   Commissioner, U.S. International Trade Commission, Washington, D.C.; Type of work -- Quasi-judicial

   12/79 - 3/84:
   Staff Director, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, John Salmon, Washington, D.C.; Type of work -- Legislative Supervisory

   7/74 - 12/79:
   Professional Staff Member, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, John Martin, Washington, D.C.; -- Type of work -- Legislative Supervisory

7. Employment record (continued):

4/62 - 7/74:
U.S. Department of Commerce, BIP, DIBA, Forest E. Abbuhl, Allen H. Garland, Richard Mattheisen, Washington, D.C.; Type of work -- Trade Policy Supervisory

12/61 - 4/62:
U.S. Department of Commerce, Office of the Secretary, Esther Kittner, Washington, D.C.; Type of work -- trade analysis

10/61 - 12/61:
U.S. Department of Commerce, Bureau of Census, Paul Shapiro, Suitland, Maryland; Type of work -- Business economics

6/60 - 9/61:
Unemployed; Fort Collins Colorado; Attending college.

5/56 - 10/61:
Cloverleaf Kennel Club, Allan Macke, Loveland, Colorado; Type of work -- Pari-mutuel.

2/59 - 6/60:
Stanley Aviation Company, T.E. Miller, Denver, Colorado; Type of work -- Production Scheduling

12/58 - 2/59:
Columbine Securities Corporation; 2535 1st National Bank, Denver, Colorado; Type of work -- Securities Sales

9/58 - 12/58:
Unemployed; 1555 Franklin Street, Denver, Colorado

7/58 - 9/58:
Centennial Turf Club, Mickey Dwyer, Box 777, Littleton, Colorado; Type of work -- Pari-mutuel

8. Government experience:

See No. 7 above. At the Commerce Department, served as advisor on general trade policy matters, trade negotiations, and administration and revision of U.S. trade laws. As House Committee on Ways and Means staff member, advised Committee Members on all aspects of trade policy. No association with state or local governments.

Memberships:

1979 - 1980:
West Laurel Civic Association, Laurel, Maryland; Office -- Area director.

1955 - 1970:
Rocky Mountain Collector's Club, Loveland, Colorado; Office -- Vice President

1961 - Present:
Pi Gamma Mu Honorary, Ft. Collins, Colorado,; Office -- None

1961 - 1982:
American Economic Association; Evanston, Illinois; Office - None

1955 - 1961:
American Legion, Loveland & Denver, Colorado; Office - None

1952 - 1958:
Tau Kappa Epsilon Fraternity, Fort Collins, Colorado; Office - President, Treasurer, Historian, Pledge Trainer

10. Political affiliations and activities:
Member, Democratic Party; No offices held

11. Honors and Awards:
National Institute of Public Affairs Fellowship, Stanford University, 1967-68.

Pi Gamma Mu National Economics Honorary Society

12. Published writings:
None

Senator DANFORTH. This is a hearing on the nomination of David Rohr for reappointment as a member of the U.S. International Trade Commission. The Committee has reviewed the financial disclosure forms of Mr. Rohr. We are anticipating receipt of the material that he has filed with the Office of Government Ethics and an opinion letter from the Director of the Office signifying Mr. Rohr's compliance with the Ethics in Government Act. When that letter is received, it will be made part of this hearing record.

[The letter from the Office of Government Ethics follows:]

United States of America
Office of Government Ethics

Office of Personnel Management
P.O. Box 14108
Washington, D.C. 20044

FEB 26 19[illegible]

Honorable Robert Packwood
Chairman, Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by David B. Rohr, who has been nominated by President Reagan for the position of Commissioner of the U.S. International Trade Commission.

We have reviewed the report and have also obtained advice from the International Trade Commission concerning any possible conflict in light of the Commission's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Rohr is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David H. Martin
Director

Enclosure

STATEMENT OF DAVID B. ROHR, COMMISSIONER, U.S. INTERNATIONAL TRADE COMMISSION, WASHINGTON, DC

Senator DANFORTH. Mr. Rohr, we are delighted you are here, and do you have any comment to make?

Mr. ROHR. Mr. Chairman, I have no prepared statement. I would just like to say I am very pleased to be here again, and it is a great honor for me to be nominated again by President Reagan for a full term on the International Trade Commission. If confirmed by the Senate, I will be very pleased to serve in that capacity. I will be glad to answer any of your questions.

Senator DANFORTH. Thank you very much. Well, as you know, you have had very strong support, I am sure, by Democrats on this Committee, and, I know, very strong support by Republicans on this Committee. So we are delighted that you are here with us.

Mr. ROHR. Thank you.

Senator DANFORTH. What is your position on whether industries should be required to have a plan to adjust to the competition in exchange for getting relief under Section 201? And does the ITC have the capability to make a determination as to the soundness of such plans?

Mr. ROHR. Mr. Chairman, it has been my view that there is a need for a broader remedy scope in order that effective remedy is made available to domestic industry. I have long thought that adjustment, or recovery programs would be an appropriate incentive for industries seeking import relief under section 201. I proposed something along those lines in my steel remedy recommendation to the President in 1984. I also recommended that continued provision of relief be conditioned upon satisfactory implementation of the adjustment plan.

With respect to the role of the Commission in this regard, I believe it would be entirely appropriate for the Commission to play a role in assessing industrial recovery plans. We, of course, do industrial competitive assessments under section 332 all the time. So, I think that we do have the capability to make a determination as to the soundness of such plans. I can only say that there might be a budget question at some point as to how adequately we could handle a burden in addition to our rapidly increasing section 332 workload.

Senator DANFORTH. What have changes in the exchange rate done with respect to remedies that are recommended by the ITC? For example, when the exchange rate changes, dumping margins change, the determination of subsidy would change. What does this lead to as far as policy is concerned, and should the—should import relief be somehow indexed to changes in exchange rate?

Mr. ROHR. I think most certainly in the past decade or so when we have seen such an increase in the value of the dollar there has been an impact particularly on tariff relief that the Commission has put into effect in affirmative title VII cases or has recommended to the President in affirmative section 201 cases. I find the concept of relief indexing to be a rather intriguing one, and I think it is an idea that should be considered.

Senator DANFORTH. Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman. Mr. Rohr, I join the Chairman in commending you in stating that the—both sides of the aisle—have supported you and look forward to continue to support you.

Mr. ROHR. Thank you.

Senator BAUCUS. A question in my mind is resources. Do you think the Commission has adequate resources to meet its obligations? I say that in part because we have burdened the Commission with additional studies, 332 studies, for example. There is no doubt that the number of actions brought before the Commission is going to probably increase, not decrease. In addition, the world is getting more complicated, not more simple.

Do you have sufficient resources to continue to do the job adequately? I know that any agency would like to have more to do more, but generally are you meeting your responsibilities? Are you meeting your obligations?

Mr. ROHR. Senator, I would like to think of the Commission as a lean, mean fighting machine. We don't have a lot of fat, if any. I think the slack which we may have had in the past is pretty well gone.

Senator BAUCUS. If you are too lean, there is not much left.

Mr. ROHR. Well, I would say that right now, and I think through fiscal 1987, we can meet our needs pretty well. We can get the job done.

Senator BAUCUS. Has your budget increased or decreased? I have to confess——

Mr. ROHR. I am sorry?

Senator BAUCUS. I don't know whether your budget has increased or decreased——

Mr. ROHR. Our budget request for fiscal 1987 staff-wise will be at the same level, 482, as for fiscal 1986. The only increases will be for normal salary increases and anticipated additional administrative costs.

Senator BAUCUS. Is your 1987—1986 staff—any higher or lower than your 1985, fiscal 1985?

Mr. ROHR. In August 1984, Congress passed a supplemental appropriation which increased the Commission's authorized level by 44 positions, a 10-percent increase over the previous fiscal year.

Senator BAUCUS. Is the budget about the same, or has it kept up with inflation? Or is it above inflation since 1984 roughly?

Mr. ROHR. We kept up with inflation by increasing salaries and administrative costs.

Senator BAUCUS. More than that or——

Mr. ROHR. Not more.

Senator BAUCUS. I urge you to let us know if you need additional resources. Obviously, under Gramm-Rudman deficit reduction we have got to—we can't—to reduce Government spending, but we also have to be realistic.

We can't close our eyes, stick our heads like an ostrich in the ground, and assume that because we are lean and mean we are getting the job done. Sometimes you have to have the resources to do the work, and if you—if the Commission—does believe in its judgment, if you personally, as a Commissioner believe in your judg-

ment, that you need more resources, I urge you strongly to make that point known to us in whatever way you think is appropriate.

Mr. ROHR. I appreciate that, Senator. I would like to make one comment on Gramm-Rudman. Of course, we don't yet know what the resolution of that legislation is going to be. But should we have to take the scheduled Gramm-Rudman cut in October this year, I think we probably would be in trouble.

Senator BAUCUS. You probably what?

Mr. ROHR. Would be in trouble.

Senator BAUCUS. OK. Thank you.

Senator DANFORTH. Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman. Mr. Rohr, I have some questions, as you might expect, dealing with agriculture. The first one I would like to refer to is how we had a split in the Commission on the pork issue. We had two commissioners abstain from voting. One commissioner voted in the negative on both live pork and chilled pork, and this was from the country of Canada. One commissioner voting in the affirmative on both live and chilled pork. And then you have yourself voting in the affirmative on the live swine imports but in the negative on the chilled pork.

So my question is, could you give me your reasoning, for splitting your vote on the Canadian pork imports?

Mr. ROHR. Thank you, Senator Grassley. The basis for my affirmative determination on live swine was that I found the cause of material injury to be imports from Canada. When I looked at the pork industry, I did not find such cause. It was not because I defined live swine and pork as two industries. When I could not find present material injury to the pork industry, I also looked for a threat of material injury.

I did not find threat either because I considered it to be too speculative for me to believe there would be a surge of imports of pork products from Canada if my determination was negative and no countervailing duty was levied on pork products. Recently, I have looked at import data for the entire year of 1985 and I have found that my expectation was correct, that there was not a surge of pork products from Canada under conditions of no countervailing duty.

I would like to say that the Commission has a strong sensitivity to the Congressional direction to treat agricultural cases differently from industrial cases in the application of our rule which concerns inclusion of growers in agricultural industries. And here I refer to the rule which permits growers to be considered part of the industry producing the processed product if, first, the more advanced product is produced from a raw product through a single, continuous line of production, and, second, there is a substantial coincidence of economic interest between the raw product producers and those of the more advanced product.

The purpose of this analysis is to determine if the participants in the industry are acting as an industry, that is allocating risk among themselves, rather than simply being independent participants in a market. I think this rule itself shows that the Commission has in the past and continues to be sensitive to the differences between agricultural and industrial applications.

Senator GRASSLEY. You are saying—what are your figures on no increase in chilled pork?

Mr. ROHR. I didn't say no increase, Senator. I said there appeared to be no surge of chilled pork imports from Canada in the second half of 1985. I have a few figures that I can give you. Essentially, I made a comparison of imports in the period of August-December, 1985 against imports in the period January-July, 1985. As you know, the countervailing duty on live swine was applied on and after July 31, 1985.

I found in the case of live swine that there was a 58 percent reduction in imports for the period August-December, 1985 as opposed to January-July, 1985. This compares to a reduction for the entire year of only seven percent, which would indicate that there was a fairly significant impact of the countervailing duty after it was applied on July 31.

Comparing the same periods for chilled pork, I found a 3.5 percent increase in imports in August-December, 1985, compared to an increase for the whole year of 17 percent, which suggests that the increase in imports of pork products was much greater in the first half than in the second half of the year.

Senator GRASSLEY. You don't think some of that would have been in—that increase in the early part of the year would have been in—anticipation of an affirmative decision in both chilled pork as well as live swine. In other words, countervailing duties on both.

Mr. ROHR. That most certainly is a possibility, Senator.

Senator GRASSLEY. All right. Well, let me ask you if you have voted on any similar agricultural products, like fish, lamb, poultry, that would have had questions similar to Canadian pork.

Mr. ROHR. I think we always have the question of definition of industry, whether it is an agriculture issue or an industrial one. Yes, I have voted on both lamb and fish cases.

Senator GRASSLEY. All right. How did you vote on those issues then as opposed to live animals coming in as opposed to the chilled processed? In other words, I am trying to find out if your position has been consistent between pork and other meat products, the relationship to the live animal versus the chilled processed.

Mr. ROHR. I am trying to recall if it was an issue in lamb. I believe that was a two-industry issue as well.

Senator GRASSLEY. All right. And did you—you voted the same way on lamb as you did on pork?

Mr. ROHR. No.

Senator GRASSLEY. What?

Mr. ROHR. That was a negative case.

Senator GRASSLEY. What?

Mr. ROHR. That was a negative determination.

Senator GRASSLEY. In both instances?

Mr. ROHR. That is right.

Senator GRASSLEY. All right. So the only comparable one would have been lamb. And so in both instances you decided that there wasn't unfair—that there wasn't any subsidy by the Government involved.

Mr. ROHR. No, we determined that there wasn't material injury from the subsidy.

Senator GRASSLEY. All right. I will accept your definition of that. We are both saying the same thing.

Mr. Rohr, so then there has not been any—from your perspective, any inconsistency with any other agricultural products with your pork decision?

Mr. ROHR. I don't believe so, Senator. I look at every case as an individual case and judge it on its individual merits.

Senator GRASSLEY. All right. The legislative history of the 1979 Trade Act refers to, as you know, I am sure, special concerns arising in determining injury to agricultural products in the industry generally. In your short period on the ITC, would you tend to agree with that statement that there are special problems that affect agriculture and maybe not other industries? And can you cite some other industries which are much more difficult to make a finding?

Mr. ROHR. I agree that there are special problems in agriculture. I think one of the biggest problems we have is getting information during our investigations on agricultural products. This is because of, quite often, the very large number of producers and the usually small size of these producers. I think the swine-pork case is a very good example of this situation.

The result often is that we don't have as much information as we ought to have and or is desired. It is difficult to get information through the questionnaire process from very small producers who simply don't have the resources to put together the kinds of data that we normally use in an investigation.

Senator GRASSLEY. Are you saying to me then that it is more difficult in agriculture than any other industry to show harm?

Mr. ROHR. No. I wouldn't say that at all. For example, we had an antidumping case a year ago involving pads for woodwind instruments. This was an extremely small domestic industry, and it was quite difficult to gather information for the investigation. This case illustrates that industrial investigations can be as difficult as agricultural cases.

Senator GRASSLEY. All right. I would like to cite to you a statistic that there is only a nine percent success rate in agricultural questions before the Commission as compared to a 50 percent success rate for industry, and that would be for a comparable period of the last three years.

Mr. ROHR. Senator, I won't quarrel with that statistic. I could give you one of my own, however.

Senator GRASSLEY. All right. Well, first of all, let me cite the source of it.

Mr. ROHR. Certainly.

Senator GRASSLEY. It was from the Journal of Commerce, May 21st of 1985, and it was in which one of your fellow commissioners, Seeley Lodwick, highlighted the fact that the US agriculture sector had only been successful in obtaining relief in one out of 11 cases in the previous 3½ years.

Mr. ROHR. I am familiar with that article. I can tell you that I have dealt with, I believe, about 20 agriculture cases since I have been on the Commission. I have voted affirmatively in, I think, about 60 percent of those cases.

Now, there may be a difference in definition of "agriculture" that my colleague is using in his analysis from what I would use. I don't know whether it is comparable or not.

Senator GRASSLEY. All right. I think you are taking my question more personal than——

Mr. ROHR. No, sir. I know it wasn't personally directed.

Senator GRASSLEY. It wasn't meant that—I am just asking you how come agriculture would not have as high a success rate as other industries if, as you said in response to my previous question, there are other industries other than agriculture where it is hard to—where it is difficult to make a finding.

Mr. ROHR. Senator, I do believe that there are some important differences in how we are able to treat agriculture from how we treat industry. I am not an expert in agriculture myself I try to be as expert as I can on every case. But, I do find it harder to deal with agricultural cases.

Senator GRASSLEY. All right. But that is your own personal background. But then basically you are saying that it is because of the lack of resources and your own personal shortcomings that makes it more difficult in agricultural issues than in other areas?

Mr. ROHR. No. I think we have the resources, Senator, and I would like to reiterate my earlier statement in this regard.

Senator GRASSLEY. See, what I am trying to find out is what is so difficult about agriculture that we would only, you know, win such a small percentage of cases compared to other segments of the economy.

Mr. ROHR. I will go back to my previous statement that I find the most difficult problem with agricultural issues is getting the kind of investigative information that we need to make a decision. Again, there often are many small producers in the defined industry—so many that it is very hard to send the staff out around the country to gather information. It is also very difficult to get responses to questionnaires. For example, in the swine case as I recall we got about a 10 percent return on our questionnaires. That made it quite difficult to develop a high quality body of information that we like to have in every investigation.

We found the same thing in fish, for example. We have a number of cases on fish products from Canada. Again, it is hard to get information from the very small producers who have limited resources. Also in some cases, we encounter less than full cooperation on the part of some parties.

Senator GRASSLEY. I would like to leave that point just for a minute and then go on to refer to the bill that I put in, S. 1629. This Committee held a hearing on that bill last December, and, of course, you probably follow this legislation too. It would apply to any agricultural product where the raw material and the processed product are linked by a single continuous line of production. And, of course, because of the complexity of the nature of agricultural petitions before your agency and, in particularly, as in the instance of the pork case in which we saw three completely different types of votes cast by the commissioners. Not to mention that the Commerce Department found in the affirmative in the case.

I would like to ask your feeling if you sense a need for yourself or maybe for the ITC as a unit to have clarifying languages contained in my bill to codify much of the ITC practice to provide, clearer guidance. It would, I hope, prevent some inconsistencies in the bizarre results that happen from the distorted, or I should say

the anguished, reasoning that seemed to go into that particular case.

Mr. ROHR. Senator Grassley, I would welcome any clarification from Congress.

Senator GRASSLEY. Well, I guess you gave me an awfully good reason for voting for you. Thank you.

Mr. ROHR. Thank you, sir.

Senator DANFORTH. Thank you very much, Mr. Rohr. It is conceivable that other members of the Committee might have questions to submit to you in writing.

Mr. ROHR. I would be very pleased to answer any such questions.

Senator DANFORTH. I appreciate your cooperation.

Mr. ROHR. Thank you.

Senator GRASSLEY. Thank you.

Senator DANFORTH. Thank you.

[Whereupon, at 2:37 p.m., the hearing was adjourned.]

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